



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET- SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2006 DEC -8 PM 12:36

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: SDWA-08-2006-0044

IN THE MATTER OF:

K2 AMERICA CORP.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 8<sup>th</sup> Day of December, 2006.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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In the Matter of:

K2 America Corp.

**Respondent.**

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**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, K2 America Corp. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. EPA issued to Respondent a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (Complaint) filed on June 14, 2006, alleging certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., relating to underground injection controls (UIC).

2. The Complaint alleged that Respondent, as the operator of the WSW-1 well which is located in Glacier County, Montana within the exterior boundary of the Blackfeet Indian Reservation, violated

(i) parts II (D)(1-4) of its UIC permit (#MT20808-04344) and 40 C.F.R. §146.23(c) by failing to timely report monitored and recorded observations of injection pressure, annulus pressure, flow rate, and cumulative injection volume for the well;

(ii) parts II (D)(1-4) of its UIC permit and 40 C.F.R. §146.23(c) by failing to submit analytical results of a fluid sample collected, at least, for pH, specific conductivity, specific gravity and total dissolved solids for the WSW-1 well; and

(iii) part II(D)(4) of its UIC permit and 40 C.F.R. §§144.52(a)(6)(ii) and 146.23(b)(2) by failing to observe the WSW-1 well's injection pressure, annulus pressure, and flow rate, even during times when the well was not being used for injection.

3. Respondent admits that EPA has the jurisdictional authority to issue the Complaint and settle this case pursuant to this Consent Agreement, but does not confirm or deny the remaining allegations, including the findings and alleged violations.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

5. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

6. Respondent consents and agrees to pay a civil penalty in the amount of four thousand six hundred fifty U.S. dollars (US\$4,650.00) in the manner described below in this paragraph. EPA finds this penalty amount is appropriate after applying the statutory factors in section 1423(c)(4)(B) of the SDWA with the facts and circumstances of this case.

- a. Payment is due within 30 calendar days from the date of the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered

to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

**Regular Mail:**

Mellon Bank  
Lockbox 360859  
Pittsburgh, PA 15251-6859

**Federal Express, Airborne, or other commercial carrier:**

U.S. EPA, 360859  
Mellon Client Service Center Rm 154-0670  
500 Ross Street  
Pittsburgh, PA 15251-6859

**Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68010727

A copy of the check shall be sent simultaneously to:

James H. Eppers  
Senior Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

and to

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.

8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

10. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this Consent Agreement. Additionally, the undersigned representative of Respondent certifies that on or about April 18, 2006, Guardian Exploration Inc. (Guardian) purchased all the assets and liabilities of Respondent and that Respondent is a wholly owned subsidiary of Guardian.

11. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

12. Each party shall bear its own costs and attorney fees in connection with this matter.

13. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**K2 America Corp.**

Date: Nov 13/06

By: \_\_\_\_\_

Graydon Kowal  
President  
Guardian Exploration Inc.

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Date: 12/06/2006

By: \_\_\_\_\_

*for* Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **K2 America Corp., DOCKET NO.: SDWA-08-2006-0044** was filed with the Regional Hearing Clerk on December 8, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James H. Eppers, Senior Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on December 8, 2006, to:

Graydon Kowal, President  
Guardian Exploration Inc.  
550 435 4<sup>th</sup> Avenue SW  
Calgary, AB Canada  
T2P3A8

December 8, 2006



Tina Artemis  
Regional Hearing Clerk/Paralegal